C.S. 10601 (4)

**IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WRIT PETITION NO. 3550 OF 2004**

**PETITIONERS**

1. Mohan Lal Gupta, son of Late Shri Gopal Das Gupta, aged about 65 years, President-Bhilai Nagrik Shahkari Bank Maryadit, Bhilai Nagar, District Durg.
2. Smt. Ramkumari Bandhe, wife of Shri Sundar Kumar, aged about 42 years, Vice President- Bhilai Nagrik Shahkari Bank Maryadit, Bhilai Nagar, resident of 143-F, Risali Sector, Bhilai.
3. Preetam Lal Tandon, son of Shri B.R. Tandon, aged about 32 years, Vice President, Bhilai Nagrik Shahkari Bank Maryadit, Bhilai Nagar, District Durg, resident of Sector-1, Bhilai.
4. Chandrabhan Patel, son of Shri B. Patel, aged about 54 years, Director- Bhilai Nagrik Shahkari Bank Maryadit, Bhilai Nagar, resident of Plot No.544/3, Ashsish Nagar, Risali, Bhilai.
5. Jagdish Kumar Deshmukh, son of Late P. Ram, aged about 50 years, Director- Bhilai Nagrik Shahkari Bank Maryadit, Bhilai Nagar, resident of Near Ravanbhata, Supela, Bhilai.
6. Jagannath Singh, son of Shri Lochan Singh Yadav, aged about 51 years, Director- Bhilai Nagrik Shahkari Bank Maryadit, Bhilai Nagar resident of Near Durga Kirana Stores, Adarsh Nagar, Camp-1, Bhilai.

P.R. No. 3570/04
Presented by Shri P.R. Patankar
dated 23-9-04

(5)

7. Ravishankar Singh, son of Shri Maneshwar Singh, aged about 39 years, Director- Bhilai Nagrik Shahkari Bank Maryadit, Bhilai Nagar, resident of 74/34, Sectior-4, Bhilai.
8. Subhash Soni, son of Shri Kuber Soni, aged about 48 years, Director- Bhilai Nagrik Shahkari Bank Maryadit, Bhilai Nagar, resident of Soni Bhawan, Bhilai.
9. Yunus Khan, son of Shri Yusuf Khan, aged about 40 years, Director- Bhilai Nagrik Shahkari Bank Maryadit, Bhilai Nagar, resident of Farid Nagar, Koka, Bhilai.
10. Smt. R.K. Sahu, wife of Shri Ramkumar Sahu, aged about 47 years, Director- Bhilai Nagrik Shahkari Bank Maryadit, Bhilai Nagar, resident of MIG1/37, HUDCO, Bhilai.

**VS**

**RESPONDENTS**

1. State of Chhattisgarh, through the Secretary, Cooperative Department, D.K.S. Bhawan, Raipur (C.G.)
2. The Registrar, Cooperative Societies, Krishak Nagar, Labhandi, Raipur (C.G.)
3. The Additional Registrar, Cooperative Societies, Krishak Nagar, Labhandi, Raipur (C.G.)
4. The Assistant Registrar, & Enquiry Officer, Cooperative Societies (Audit), Durg, District Durg (C.G.)

**WRIT PETITION UNDER ARTICLE 227 & 226 OF THE CONSTITUTION OF INDIA.**

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.3550 of 2004

Mohan Lal Gupta & Others

- Versus -

State of Chhattisgarh & others

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POST FOR ORDER ON 26th NOVEMBER, 2004

Sd/-
L.C. Bhadoo
Judge

**HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)**

Writ Petition No.3550 of 2004

Mohan Lal Gupta & Others

-Versus-

State of Chhattisgarh & Others

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Mr. P. Diwakar, Advocate: For the petitioner.
Mr. N.K. Agrawal, Dy. A.G.: For the State/respondents 1 to 4.
Mr. Anand Kumar Tiwari, Advocate: For the Intervener.

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**O R D E R**

(Passed on 26th November, 2004)

**L.C. BHADOO, J.**

1. By this writ petition filed under Article 226/227 of the Constitution of India the petitioners, who are President, Vice-President and Directors of Bhilai Nagrik Shahkari Bank Maryadit, Bhilai Nagar, District Durg, have questioned the correctness and legality of the show cause notice dated 22.9.2004 (Annexure-P/3) issued by respondent No.3 Additional Registrar, Co-operative Societies, Raipur under Section 53(2) read with Section 61 of the C.G. Co-operative Societies Act, 1960 whereby the petitioners have been asked to submit their reply within seven days about the irregularities committed by them while discharging their function in their official capacity and why they should not be removed from their posts and in their place an authority should not be appointed.

2. Brief facts leading to filing of this writ petition are that the election for the posts of President, Vice President & Directors of Bhilai Nagrik Shahkari Bank Maryadit, Bhilai Nagar, District Durg, was conducted and on 23.5.2000 the

petitioners were elected for a period of five years. Vide show cause notice dated 22.9.2004 (Annexure-P/3) the petitioners have been directed to file their reply within seven days about the nine irregularities mentioned in the show cause notice. The allegations against the petitioners are that loan amount of Rs.2033.23 Lac is outstanding against the debtors, but no efforts have been made to recover that amount and on account of that the bank has suffered a loss. Further allegation is that on account of mismanagement during the period 2000-04 the bank has suffered a loss. There are irregularities in spending the amount by the Board of Directors, as the same was spent in violation of the guidelines issued by the Reserve Bank of India. Further irregularities are in respect of the allotment of residential accommodations, payment of electricity bills, sanction of loan to the Managing Director, Manager and Additional Manager of the Bank, as also there is irregularity in respect of the expenditure incurred in the maintenance of the vehicles, maintenance of log book of the vehicle, misuse of the official telephone, misuse of fund in respect of advertisement and in the matter of disbursement of loan.

3. The case of the petitioners is that the allegations are baseless and have been levelled against the petitioners based on the enquiry report submitted by the Assistant Registrar, Durg dated 23-8-2004. The Assistant Registrar conducted the enquiry without giving any opportunity to the petitioners to explain their conduct. The impugned show cause notice has been issued with a pre-determined mind to supersede the Board of Directors. The impugned show cause notice is a farce, as the same is based on the frivolous allegations and to satisfy a particular political group. It has been issued without satisfying the requirement of law with malafide intention in an arbitrary manner. The petitioners have not committed any financial irregularities and they are making all efforts for recovery of the loan amount. The petitioners have not been given opportunity to comply with the provisions and ultimately,

the petitioners have prayed for quashment of the impugned show cause notice dated 22.9.2004 (Annexure-P/3).

4. Return has been filed on behalf of the State/respondents No.1 to 4 in which it has been mentioned that the impugned show cause notice has been issued on the basis of the material available on the record and after considering the irregularities committed by the petitioners, they have been asked to explain their conduct within seven days, show cause notice is based on the legal premises. The petitioners have already filed their reply, opportunity of hearing was given to them and now the final order is to be passed, therefore, the petition of the petitioners being premature liable to be dismissed. It is incorrect to say that the impugned show cause notice has been issued with a predetermined mind to supercede the Board of Directors, before passing any order as per provisions of the Act consent of the Reserve Bank of India was asked for and same has been received. It is further mentioned in the return that vague and bald allegations have been leveled against the respondents. Letter Annexure P-6 was written by the Additional Registrar to Reserve Bank of India to protect the Bhilai Nagrik Sahkari Bank from its licence cancellation and by this letter it was never intended to praise the Board of Directors. It is further mentioned that after considering the material on record, reply and after affording the opportunity to the petitioners final order would be passed in accordance with law. The provisions contained in Section 53(2) have been complied with, all the documents on the basis of which the authority has formed the prima-facie opinion to issue show cause notice has been supplied to the petitioners. Nothing has been concealed, which is clear from the show cause notice (Annexure P-3). No jurisdictional error much less absolute want of jurisdiction has been pointed out by the petitioners. The ground taken in the petition that Additional Registrar will supercede the Board of Directors without any rhyme or reason, is incorrect, the order will be passed after

considering the material available on record and contentions, objections & submission of the petitioners. Ultimately, it has been prayed that the petition of the petitioners be dismissed being premature.

5. I have heard Mr. P. Diwakar, learned counsel for the petitioners, Mr. N.K. Agrawal, learned Deputy Advocate General for the State/respondents 1 to 4 and Mr. Anand Kumar Tiwari, learned counsel for the Intervener.

6. The main objection about the maintainability of the writ petition raised by the respondents is that against show cause notice writ petition is not maintainable. The petitioners have been asked to show cause and explain about their stand about the irregularities pointed out in the impugned notice, they have already submitted their reply and opportunity of hearing has already been given to them, therefore, they would be entitled to file petition only if any adverse order is passed against them.

7. Learned counsel for the petitioners argued that the respondents have already formed the opinion and they have reached to the conclusion, which is evident from the notice itself, therefore, nothing is remained to be decided, as such the petition is maintainable. He further argued that the permission of the Reserve Bank of India should have been asked for only after receiving the reply of the petitioners, if considering all the material/reply the authority reaches to the conclusion that some irregularities have been committed. But in this case the view of the Reserve Bank of India was asked for in advance with a pre-determined conclusion; therefore, it was not a compliance of provisions of Section 53(1) of the Act. He further urged that in this case compliance of sub-section (2) of Section 53 has also not been made. As per sub-section (2) of Section 53 the respondents are required to serve on the petitioners the list of the allegations, documents and witnesses thereof. Counsel further argued that allegations are ill founded and contrary to the record.

The law on the point as has been held by the Hon'ble Apex Court in the matter of **The Special Director and another Vs.Mohd.Ghulam Ghouse and another reported in JT 2004 (1) SC 206** that *unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into fact, writ petitions should not be entertained for the mere asking and as a matter of routine. The writ petitioner should invariably be directed to respond to the show cause notice and take all stands high lighted in the writ petition. When the Court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is accorded to the writ petitioner even at the threshold by the interim protection granted.* In the matter of **M/s Procter & Gamble Home Products Ltd. Vs. Commissioner of Customs & Central Excise reported in 2001 (1) MPJR 191** the M.P. High Court after analyzing the law regarding the maintainability of the writ petition against a show cause notice has held that *writ petition against the show cause notice is maintainable only on the ground that it was issued by an authority having no jurisdiction and where the show cause notice has been issued as per the requirement of the provisions then further scrutiny not possible in writ and show cause notice cannot be quashed.*

8. Based on the above legal position, if we look into the facts of the present case, the arguments advanced by the learned counsel for the petitioners are not sustainable and tenable at law. Learned counsel for the petitioners has not raised a point that the Additional Registrar, Cooperative Societies is not authorized to issue the impugned show cause notice. Section 53 of the C.G. Cooperative Societies Act, 1960 envisages that *"if, in the opinion of the Registrar, the committee of any society; (a) is negligent in the performance*

*of the duties imposed on it by or under this Act or bye-laws of the society or by any lawful order passed by the Registrar or is unwilling to perform such duties; or (b) commits acts which are prejudicial to the interests of the society or its members; or (c) violates the provisions of this Act or the rules made thereunder or bye-laws of the society or any order passed by the Registrar, the Registrar may, by order in writing, remove the committee and appoint a person or persons to manage the affairs of the society for a specified period not exceeding two years in the first instance. Proviso to sub-section (1) of Section 53 further envisages that in case of a Co-operative Bank, the order of super session shall not be passed without previous consultation with the Reserve Bank of India. Sub-section (2) of Section 53 envisages that no order under sub-section (1) shall be passed unless a list of allegations, documents and witnesses in support of charges leveled against it has been provided and the committee has been .given a reasonable opportunity of showing cause against the proposed order and representation, if any, made by it, is considered."*

9. In this connection, if we look into the facts of the present case it is an admitted position that before proceeding against the petitioner, the respondents have consulted with the Reserve Bank of India as per provisions. The Reserve Bank of India has sent its consent on the show cause notice issued by the Additional Registrar vide letter dated 26.10.2004, in compliance of sub-section (1) of Section 53 of the Act as many as 09 irregularities have been pointed out by the Additional Registrar in the official functioning of the petitioners and they have been asked to show cause and explain about these irregularities. Therefore, on the facts of the case the Additional Registrar was competent to issue show cause notice and same has been issued under the enabling powers of Section 53 of the Act, therefore, it cannot be said that the impugned show cause notice suffers from lack of jurisdiction.

10. Now coming to the point raised by the learned counsel for the petitioners that the allegations of irregularities levelled in the show cause notice are based on the unsustainable grounds. I am afraid while hearing this writ petition; against a show cause notice this court is not required to go into the sustainability of grounds on which the show cause notice has been issued. For this purpose the petitioners are entitled to file their reply and in their reply they can take all the stands which they have taken in this writ petition and they are within their right to raise this plea that the grounds which have been mentioned in the impugned show cause notice are not sustainable on the facts of the case and the respondents after giving opportunity of hearing to the petitioner and considering the reply would pass the order in accordance with law. For this I am fortified in my opinion with the above two judgments of the Hon'ble Apex Court and M.P. High Court in which it has been held that whether the show cause notice was founded on any legal premises is jurisdictional issue which can even be urged by the recipients of the notice and such issues can also be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. Looking to the allegations mentioned in the show case notice it cannot be said that the notice is non est in law, in the eyes of law or there was no basis for issuance of such a notice.

11. Now coming to the point raised by learned counsel for the petitioners that language of the last paragraph of the impugned show cause notice shows that respondent No.3 has issued the impugned notice with a pre-determined mind to supercede the petitioners' bank.

12. I have perused the last paragraph of the impugned show cause notice in which it has been mentioned that on the grounds mentioned above you should show cause that on account of the irregularities committed by the Board of Directors, why they should not be removed for one year and in their place an authorized officer should not be appointed.

This notice is strictly in conformity with the provisions of sub-section (1) of Section 53 of the Act, which says that *the Registrar may, by order in writing, remove the committee and appoint a person or persons to manage the affairs of the society for a specified period not exceeding two years in the first instance.* Therefore, by this notice the petitioners have been asked to show cause against the irregularities committed by them and to explain that why they should not be superceded on the ground of those irregularities. As this notice has been issued on the legal premises and in conformity with the Section 53 of the Act, therefore, it cannot be said that looking to language of the notice, respondent No.3 has issued this notice with a pre-determined mind to supercede the Board of Directors of the Bank.

13. The next point raised by learned counsel for the petitioner is that respondent No.3 without considering the material on record and before the receipt of the reply of petitioners consulted with Reserve Bank of India. In my opinion this argument is also not tenable for the reasons that proviso to Section 53 envisages that in a case of Co-operative Bank, the order of super session shall not be passed without previous consultation with the Reserve Bank of India. In this case respondent No.3 while sending the copy of show cause notice to the petitioners forwarded the same to Reserve Bank of India along with audit report, inspection report and relevant documents, therefore, it cannot be said that without supplying necessary material to Reserve Bank of India and without considering any material respondent No.3 moved for consultation with Reserve Bank of India. In fact, previous consultation with Reserve Bank of India is envisaged in the above proviso and respondent No.3 has complied with the same, therefore, it cannot be said that consultation is in contrary to the above provisions.

14. Now coming to the next point raised by learned counsel for the petitioner that compliance of sub-section (2) of Section 53 of the Act has not been made in this case. In the first

instance, as has been mentioned above and as has been held by the Hon'ble Apex Court that point can be urged by the petitioners in reply to their show cause notice that necessary document as envisaged under sub-section (2) of Section 53 has not been served on them in order to enable them to reply the show cause notice. In this petition the petitioners have not placed on record any document indicating and showing that such an objection was raised by them before respondent No.3 and he has rejected their contention. Even otherwise, a bare perusal of show cause notice (Annexure P-3) shows that in the list of enclosure of impugned notice it has been mentioned that copy of audit report, inspection report and enclosed annexures in all the documents running in 91 pages were given to the petitioners, therefore, prima-facie this argument is also not sustainable. Even otherwise, still if the petitioners feels that the provisions of Section 53 (2) has not been complied with, then they are at liberty to raise the same before respondent No.3 in writing and also at the time of arguments.

15. In view of the foregoing paragraphs, I am of the view at this stage that the petitioners have not been able to make out a case for intervention by this Court under Article 226/227 of the Constitution of India by invoking extraordinary jurisdiction. Therefore, this petition is liable to be dismissed at the admission stage and accordingly, it is dismissed being not maintainable.

**Sd/-**
**L.C. Bhadoo**
**Judge**